

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation whether San Diego Gas & Electric Company, Southern California Gas Company and their holding company, Sempra Energy, respondents, have complied with relevant statutes and Commission decisions, pertaining to respondents' holding company systems and affiliate activities.

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PUBLIC UTILITIES COMMISSION

SAN FRANCISCO OFFICE
INVESTIGATION

ORDER INSTITUTING INVESTIGATION

I. Summary

We issue this Order Instituting Investigation to determine whether respondent utilities, San Diego Gas and Electric Company (SDG&E), Southern California Gas Company (SoCal Gas) and their holding company, Sempra Energy (Sempra) have complied with relevant statutes and Commission decisions in the management, oversight and operations of their companies. As more fully set forth below, we are concerned that respondents' management and actions, have resulted in a situation where unregulated affiliates of the respondent utilities have substantial business activities within the utilities' service territories that create direct conflicts of interests between the utilities (and the utilities' ratepayers) and their unregulated affiliates. In this investigation, the Commission will evaluate the actions of the utilities and their holding company and affiliates to determine if the significant number and breadth of energy-related business activities undertaken by the holding company within the service

territories of SDG&E and SoCal Gas have violated Commission decisions, rules, or orders, and/or applicable statutes.

II. Background

In the 1980's and 1990's, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), and SDG&E sought the Commission's permission to change their respective corporate structures and become part of holding company systems. The Commission has issued the following decisions approving the formation of PG&E Corporation, Edison International (EIX), Enova Corporation, and Sempra Energy, respectively, as holding companies:

PG&E	D.96-11-017, 69 CPUC2d 167 (Nov. 6, 1996) (PG&E Authorization I); D.99-04-068, 194 P.U.R.4 th 1 (April 22, 1999) (PG&E Authorization II);
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SDG&E	D.95-05-021, 59 CPUC2d 697 (May 10, 1995) (SDG&E Authorization I); D.95-12-018, 62 CPUC2d 626 (Dec. 6, 1995) (SDG&E Authorization II); and D.98-03-073, 184 P.U.R.4 th 417 (March 26, 1998) (Sempra Merger Authorization); and
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Edison	D.88-01-063, 27 CPUC2d 347 (Jan. 28, 1988) (Edison Authorization).
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Because of the potential for abuse arising from the holding company structure,¹ the Commission's authorizations for the formation of respondent holding companies depended on respondents' compliance with a set of carefully

¹ See generally, section 1 of the Public Utility Holding Company Act (PUHCA), 15 U.S.C. § 79a (detailing potential abuses); SDG&E Authorization II, D.95-12-018, 62 CPUC2d at 634. The three respondent holding companies presently are exempt under section 3(a)(1), 15 U.S.C. § 79c(a)(1), from most of PUHCA's provisions.

considered conditions. The utilities and/or parent companies were required to pass, and file with this Commission, board resolutions agreeing to the conditions as a prerequisite to the Commission's permission to form the holding company structure. The parties executed these agreements as required.

III. Utility and Holding Company Actions

SDG&E and SoCal Gas provide energy services to bundled customers in Southern California, subject to the Commission's regulation. SDG&E provides both electric and gas services to customers in the San Diego area, while SoCal Gas provides gas services to much of Southern California. Unregulated affiliates of these two utilities, under the management of Sempra Energy, have undertaken significant energy-related business activities within and adjacent to the service territories of these two utilities.

These activities include, but are not limited to, wholesale electric and gas trading, development of generation facilities, gas pipeline facilities, and the provision of direct access services. Sempra companies have also been involved in distributed generation equipment and contracting for the sale of billions of dollars of electricity to the California Department of Water Resources. Sempra has also requested Commission approval to participate in future sales of electricity to its affiliated regulated utility, SDG&E, through our procurement proceeding.

These unregulated activities create a direct conflict between the interests of Sempra and the interests of the regulated utilities and their ratepayers. This is particularly problematic given the large magnitude of the unregulated activities, amounting to billions of dollars, and the breadth of these activities, covering nearly every area of energy services. And, as we have noted in D.02-10-062, the primary area wherein the Commission has found problems in the past regarding

power procurement has been in deals involving utilities and unregulated affiliates:

“The exhibits prepared by the utilities show that there were only a limited number of disallowance decisions made by the Commission during the seventeen year period from 1980 to 1996 for the three utilities and that the majority of these decisions and dollar adjustments involved affiliate transactions.” (D.02-10-062, page 47 mimeo)

IV. Order Instituting Investigation

This Commission has jurisdiction over respondents by virtue, inter alia, of their acceptance of those conditions that governed the formation of the respective holding companies. In addition, many provisions of the Public Utilities Code give the Commission broad authority to act to protect ratepayers in a variety of circumstances, to enforce the Constitution, statutes, and the Commission’s rules, orders, and decisions, and to remedy violations thereof. These provisions include, but are not limited to, Public Utilities Code § 451² (requiring public utilities to furnish and maintain adequate, efficient, just and reasonable service as necessary to promote the safety, health, comfort, and convenience of its patrons, employees and the public); § 701 (Commission may do all things necessary and convenient to exercise its power and jurisdiction to regulate public utilities); § 761 (Commission may adopt order or rule to remedy unjust or unreasonable practices of a public utility); § 798 (provides for remedies against a utility that makes imprudent payments to its holding company); and §§ 2101 – 2113

² All code section references are to the California Public Utilities Code unless otherwise noted.

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(authority to enforce Constitution, statutes, and violations of Commission orders, rules, and decisions).

Common law also provides the Commission with authority to disregard corporate forms in a variety of circumstances in order to carry out the Commission's responsibilities. See, e.g., General Telephone Co. v. P.U.C., 34 Cal. 3d 817 (1983).

Finally, under Public Utilities Code Section 1708, upon proper notice to the parties and with opportunity to be heard as in the case of complaints, the Commission may rescind, alter, or amend any order or decision made by it. The Commission recognizes this authority in the context of its holding company decisions. For example, in PG&E Authorization II, the Commission noted its authority to impose additional conditions if necessary, and specifically provided that parties could raise the need for additional conditions in the future. See PG&E Authorization II, 194 P.U.R.4th 1, 12-13 (April 22, 1999).

In this investigation, the Commission will review the past activities of SDG&E, SoCal Gas, their holding company and unregulated affiliates to determine if they have complied with the Commission's prior decisions and rules. In addition, we will consider whether any actions taken by the utilities and/or the holding company and affiliates have resulted in unjust or unreasonable impacts on utility customers.

Now time to raise these issues. Not only is it important to determine whether any prior violations of our holding company decisions or other laws have occurred, but it is also critical to take steps to ensure that healthy utility companies can continue to function in a way that balances both ratepayer and shareholder interests. This is particularly important at this time given that the utilities are resuming their historic roles as procurers of power for their customers, the dysfunction and lack of effective federal regulation of wholesale gas and electric markets and the magnitude and breadth of energy related

business activities that Sempra and its affiliates have chosen to engage in within the service territories of their regulated affiliates, SDG&E and SoCal Gas.

We note that parties in a wide variety of proceedings have raised concerns regarding whether actions taken by SDG&E and SoCal Gas are in the best interests of ratepayers or are instead meant to benefit unregulated affiliates. Parties have raised such assertions in proceedings ranging from the supply of natural gas, to the procurement of electricity and the construction of transmission lines. The Commission has not yet taken it upon itself to fully consider the concerns raised by parties regarding this alleged inappropriate conduct, since those proceedings were not designated to address compliance with the Commission's holding company and affiliate rules.

The events described above suggest that significant conflicts of interest exist between the regulated utilities and their unregulated affiliated. If the investigation determines that actions undertaken by the respondent utilities or their affiliates have been detrimental to the interests of the utilities' ratepayers the Commission may, as a result of this investigation, consider the adequacy of the current conditions contained in the holding company authorization decisions cited above. Accordingly, in this proceeding, we will determine whether additional rules, conditions, or other changes are needed to protect ratepayers and the public from dangers of abuse of the holding company structure. Specifically, should it be apparent that problems exist, we may consider whether we should modify, change, or add conditions to the holding company decisions, make further changes to the holding company structure, alter the standards under which we determine whether to authorize the formation of holding companies, otherwise modify the decisions, or recommend statutory changes to the Legislature.

V. Preliminary Scoping Memo

The scope of this proceeding will include all issues raised in this order, but will not be limited to these issues. Any party may suggest related issues for the Commission's consideration. The present investigation is classified as a quasi-legislative proceeding and is expected to require a hearing.

The assigned Administrative Law Judge will convene a prehearing conference (PHC) to develop a service list for this proceeding and to further delineate issues related to scope and schedule for this proceeding.

Any person who objects to the categorization of this investigation must file an appeal no later than ten days after the date of this OII, pursuant to Rule 6.4(a).

The temporary service list is attached to this order and shall be used for service until a service list for this proceeding is established at the PHC. Persons who want to become a "party" to this proceeding shall appear at the PHC, or at the formal hearing, and fill out the "Notice of Party/Non-Party Status" form (appearance form).

Those persons who do not want to be parties, and only want notice of the hearings, rulings, proposed decisions, and decisions may either appear at the PHC or the formal hearing and fill out an appearance form, or they may mail a written request to the Process Office requesting that they be added to the service list for information only.

Those persons employed by the State of California who are interested in this proceeding may be added to the "state service" section of the service list either by appearing at the prehearing conference or at the formal hearing and filling out an appearance form, or they may mail a written request to the Process Office requesting that they be added to the state service list. All of the names

appearing on the state service list shall be served with all documents that parties may submit or file in connection with this proceeding.

The Process Office shall develop an initial service list based on the appearances at the first PHC. This initial service list shall be posted on the Commission's website, www.cpuc.ca.gov, as soon as it is practicable.

Any party interested in participating in this investigation who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor Office in Los Angeles at (213) 649-4782, or in San Francisco at (415) 703-2074.

VI. Ex Parte Communications

In a quasi-legislative proceeding, ex parte communications are permitted without restriction, pursuant to Pub. Util. Code. Section 1701.4(b) and Rule 7(d).

IT IS ORDERED that:

1. An investigation is instituted on the Commission's own motion into whether respondents have violated relevant statutes and Commission decisions as described above. As a result of this investigation, the Commission may consider remedies, prospective rules, or conditions, as appropriate.
2. San Diego Gas & Electric Company, Southern California Gas Company, as well as their parent holding company, Sempra Energy, are made respondents to this Order Instituting Investigation (OII).
3. The category of the investigation is quasi-legislative as that term is defined in Rule 5(c) of the Commission's Rules of Practice and Procedure.
4. An initial service list for this proceeding shall be created by the Process Office and posted on the Commission's website (www.cpuc.ca.gov) as soon as it is practicable after the first prehearing conference. Parties may also obtain the service list by contacting the Commission's Process Office at (415) 703-2021.

5. Persons interested in this proceeding shall follow the procedures described in this investigation to get on the service list.

6. A prehearing conference shall be scheduled at a date and time to be determined by the assigned Administrative Law Judge for the purpose of establishing a service list for this consolidated proceeding, setting a further schedule, and addressing other procedural issues. Interested persons may file prehearing conference statements or a response to this order as directed by the Administrative Law Judge, stating any objections to the order regarding the need for hearings, issues to be considered, or proposed schedule. Service shall be made in the manner described in Ordering Paragraph 12.

7. Until a service list is established at the prehearing conference, all documents that must be served in connection with this docket shall be served on the offices of all five Commissioners, and the assigned Administrative Law Judge.

8. The Executive Director shall cause this Order to be served by certified mail on all respondents' designated agents for service in California as follows: for SDG&E: Steven D. Davis, 101 Ash Street, San Diego, CA 92101-3017; and for Sempra Energy: Thomas C. Sanger, 101 Ash St., San Diego, CA 92101-3017.

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9. Because action in this proceeding may modify past Commission decisions set forth in this order, the Executive Director shall serve this order on the parties to the following proceedings; A.94-11-013 (SDG&E's holding company application); and, A.96-10-038 (application of Pacific Enterprises and Enova Corporation for a Merger). Additionally, the Commission's Process Office shall serve parties to the following proceedings with this order:

Rulemaking 97-04-011/Investigation 97-04-012 (Affiliate Transaction Proceeding).

This order is effective today.

Dated _____, at San Francisco, California.